

## § 908.11

this part shall be governed by chapter 7 of Title 5 of the United States Code (5 U.S.C. 701 *et seq.*).

(e) *Order to pay civil money penalty.* In connection with its review of a final order pursuant to this part, the court of appeals shall have authority in accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(e) of the Safety and Soundness Act (12 U.S.C. 4634(e)), to order payment of any civil money penalty imposed by the Finance Board.

(f) *No automatic stay.* In accordance with section 2B(a)(5) of the Act (12 U.S.C. 1422b(a)(5)) and section 1374(f) of the Safety and Soundness Act (12 U.S.C. 4634(f)), the commencement of an action for judicial review of a final decision and order of the Board of Directors under this section shall not operate as a stay of any such order, unless the court of appeals specifically orders a stay of the order in whole or in part.

## § 908.11 Jurisdiction and enforcement.

(a) *Enforcement.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(a) of the Safety and Soundness Act (12 U.S.C. 4635(a)), the Finance Board may bring an action in the United States District Court for the District of Columbia for the enforcement of any effective order issued by the Board of Directors under this part. Such court shall have jurisdiction and power to order and require compliance with such order.

(b) *Limitation on jurisdiction.* In accordance with sections 2B(a)(5) and 2B(a)(7) of the Act (12 U.S.C. 1422b(a)(5) and (a)(7)) and section 1375(b) of the Safety and Soundness Act (12 U.S.C. 4635(b)), and except as otherwise provided in the Act, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any order issued by the Board of Directors under this part, or to review, modify, suspend, terminate, or set aside any such notice or order.

## § 908.12 Notice after separation.

The resignation, termination of employment or participation, or separation of a director or executive officer of a Bank shall not affect the jurisdiction

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and authority of the Finance Board to issue any notice and proceed under this part against any such director or executive officer, if such notice is served before the end of the two-year period beginning on the date such director or executive officer ceases to be associated with the Bank.

## § 908.13 Public disclosure of final orders.

(a) *In general.* The Finance Board shall make available to the public—

(1) Any written agreement or other written statement for which a violation may be redressed by the Finance Board or any modification to or termination thereof, unless the Finance Board in its discretion, determines that public disclosure would be contrary to the public interest;

(2) Any order that is issued by the Board of Directors and that has become final in accordance with this part; and

(3) Any modification to or termination of any final order made public pursuant to this part.

(b) *Delay of public disclosure under exceptional circumstances.* If the Finance Board determines in writing that the public disclosure, pursuant to paragraph (a) of this section, of any final decision and order of the Board of Directors would seriously threaten the financial health or security of a Bank, the Finance Board may delay the public disclosure of such decision and order for a reasonable time.

(c) *Documents filed under seal.* The Finance Board may file any document or part thereof under seal in any hearing commenced by the Finance Board under this part, if it determines in writing that disclosure thereof would be contrary to the public interest.

(d) *Retention of documents.* The Finance Board shall keep and maintain a record, for not less than six years, of all documents described in paragraph (a) of this section and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the Finance Board under this part or any other law.

(e) *Disclosure to Congress.* This section may not be construed to authorize the

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withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

### § 908.14 No implied private right of action.

This part shall not create any private right of action on behalf of any person against a Bank or any director or executive officer of a Bank or impair any existing private right of action under applicable law.

### §§ 908.15–908.19 [Reserved]

## Subpart C—General Rules

### § 908.20 Authority of the Board of Directors.

The Board of Directors may, at any time during the pendency of a proceeding under this part, perform, direct the performance of, or waive the performance of any act that could be done or ordered by the presiding officer.

### § 908.21 Authority of the presiding officer.

(a) *General rule.* All cease and desist or civil money penalty proceedings governed by this subpart shall be conducted in a hearing on the record in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 551–559. The presiding officer shall have complete charge of the hearing, conduct a fair and impartial hearing, avoid unnecessary delay, and assure that a record of the hearing is made.

(b) *Powers.* The presiding officer shall have all powers necessary to conduct the hearing in accordance with paragraph (a) of this section and 5 U.S.C. 556(c). The presiding officer is authorized to—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding, including settlement conferences, mediation or other consensual methods of dispute resolution;

(4) Administer oaths and affirmations;

(5) Issue subpoenas, subpoenas *duces tecum*, and protective orders, as authorized by this part, and to revoke, quash, or modify such subpoenas;

(6) Take and preserve testimony under oath;

(7) Rule on motions and other procedural matters appropriate in a hearing, except that only the Board of Directors shall have the power to grant any motion to dismiss a cease and desist or civil money penalty proceeding or to make a final determination on the merits of such proceedings;

(8) Regulate the scope and timing of discovery;

(9) Regulate the course of the hearing and the conduct of representatives and parties;

(10) Examine witnesses;

(11) Receive, exclude, limit, or otherwise rule on evidence;

(12) Upon motion of a party, take official notice of facts;

(13) Recuse herself/himself upon motion made by a party or on her or his own motion;

(14) Prepare and present to the Board of Directors a recommended decision as provided in this part;

(15) Establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(16) Do all other things necessary and appropriate to discharge the duties of a presiding officer.

### § 908.22 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Finance Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. The Finance Board may make such determination *sua sponte* at any time by written notice to all parties.

(b) *Motion for closed hearing.* Within twenty (20) days of service of a notice, any party or respondent may file with the presiding officer a motion for a non-public hearing and any party may file a pleading in reply to the motion. The presiding officer shall forward the motion and any reply, together with a recommended decision on the motion, to the Board of Directors, who shall